



**THE ATTORNEY GENERAL
OF TEXAS**

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AUSTIN, TEXAS 78711

September 14, 1967

**OVERHELD BY
Calvert vs.
Engineers & Fabricators, Inc.
440 SW 24 320
Writ Ref. n.r.e., 1969**

**Honorable Robert S. Calvert
Comptroller of Public Accounts
Austin, Texas**

Opinion No. M-132

**Re: Limitation periods
for deficiency deter-
minations and suits
to collect Limited
Sales, Excise and Use
taxes.**

Dear Mr. Calvert:

You have requested our opinion on the following question:

Under the provisions of the Limited Sales, Excise and Use Tax Act (Chapter 20, Title 122A, Taxation-General, Vernon's Civil Statutes) as modified by Article 1.045 (added as a new article in Title 122A by H.B. 144, Acts 60th Leg.R.S. 1967, ch. 448, p. 1019, effective July 1, 1967), must a suit for delinquent sales or use tax be brought within four years after the tax is due and payable, or does the Comptroller have four years in which to issue a deficiency determination and thereafter have an additional period of time in which to bring suit?

You state that before the enactment of Article 1.045 it was your position that you had four years in which to make a deficiency determination and thereafter an additional three years in which to bring suit. This position was derived from paragraph (D)(1) of Article 20.06 and paragraph (G)(1) of Article 20.09. The former imposes a four-year limitation period for deficiency determinations, while the latter provides that if "any amount required to be paid to the State under this Chapter is not paid when due, the Comptroller may, within three (3) years after the amount is due," file suit. Your position was that the amount of a deficiency determination was not "due" until the date specified in paragraph (E) of Article 20.08, and therefore the suit limitation period did not begin until that date. Although there are no Texas cases on the point, the position was supported by three cases of courts of California, whose sales and use tax statutes contain similar limitation provisions. People v. West Pub. Co., 216 P.2d 441(1950); People v. Hochwender, 124 P.2d 823(1942) People v. Nymer, 163 P.2d 92(1945).

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Paragraph (A) of Article 1.045 provides that, with certain exceptions, the Comptroller shall "assess" any tax imposed by Title 122A within seven years from the date "such tax is due and payable," and that he may bring suit within the same period, but that no action may be commenced after seven years "(or such other shorter period of time as may be provided in this Title) from the date such tax is due and payable". (Underlining added.) However, paragraph (B) of Article 1.045 provides:

"For the purpose of the Limited Sales, Excise and Use Tax imposed by Chapter 20 of this Title, the period of time provided by this Article shall be four (4) years, and any provision of Chapter 20 to the contrary is hereby repealed to the extent of such conflict."

While Article 1.045 speaks of "assessment" and Chapter 20 speaks of "determination", it seems clear that a "determination" is an "assessment" as that term is used in Article 1.045. Paragraph (A) of Article 1.045 makes the limitation period for both assessments and suits to begin to run when the tax is due and payable. Paragraph (B) then expressly makes such period four years for the purpose of the tax imposed by Chapter 20. In view of the express repeal of any conflicting provision of Chapter 20, we believe the "four plus three" position is no longer tenable. This follows since the position depended on the limitation period for suit beginning on the due date of the determination, whereas Article 1.045 now expressly makes the limitation period for bringing suit to begin on the due date of the tax.

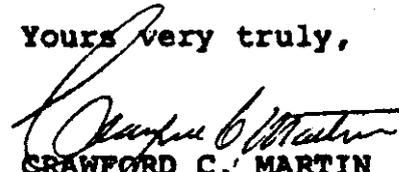
There is the further question of the effect of the "shorter period of time" provision of paragraph (A) of Article 1.045, in view of the fact that the suit limitation period of Chapter 20 had been three years. However, the anomaly of providing that the period for making a determination is four years but that suit can be brought only during the first three years of that period is avoided by the provision of paragraph (B) of Article 1.045 that any provision of Chapter 20 is repealed to the extent of the conflict.

In answer to your question, it is our opinion that the effect of paragraph (B) of Article 1.045 is to limit the time within which a deficiency determination of the tax imposed by Chapter 20 can be made to a period of four years beginning when the tax is due and payable, and that suit to collect such tax must be brought within the same period, except in the situations provided for in paragraphs (A) (1), (A) (2), (A) (3), (C), (E) and (F) of Article 1.045.

SUMMARY

The effect of paragraph (B) of Article 1.045, Title 122A, Taxation General, Vernon's Civil Statutes, is to limit the time for deficiency determination and suit to collect the tax imposed by Chapter 20 thereof to the same period of four years beginning with the date the tax is due and payable, except in certain situations provided for in other paragraphs of Article 1.045.

Yours very truly,



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APPROVED:
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